

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

JAMES W. JAIKINS

Plaintiff,

CIVIL ACTION No. 04-73404

v.

HONORABLE ARTHUR J. TARNOW  
UNITED STATES DISTRICT JUDGE

CATERPILLAR, INC. AND FREEDOM YACHT  
SALES, INC.,

MAGISTRATE JUDGE  
R. STEVEN WHALEN

Defendants.

**ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION [D/E # 128],  
AND DENYING DEFENDANT'S MOTION TO STAY THE PROCEEDINGS [D/E # 135]**

The Local Rules for the Eastern District of Michigan state that in a motion for reconsideration “the movant must not only demonstrate a palpable defect by which the court and the parties have been misled but also show that correcting the defect will result in a different a disposition of the case.” L.R. 7.1(g)(3). A “palpable defect” is a defect which is obvious, clear, unmistakable, manifest or plain. *Marketing Displays, Inc. v. Traffic Devices, Inc.*, 971 F. Supp. 262, 278 (E.D. Mich. 1997), citing Webster’s New World Dictionary 974 (3rd Ed. 1988). Further, the Local Rules also provide that any “motions for rehearing or reconsideration that merely present the same issues ruled upon by the court, either expressly or by reasonable implication,” shall not be granted. L.R. 7.1(g)(3). Having read the parties’ briefs and heard the parties’ positions at oral argument on April 6, 2007, for the reasons stated on the record,

**IT IS HEREBY ORDERED** that Defendant’s Motion for Reconsideration is **DENIED**.

The Defendant has indicated that it plans on filing an interlocutory appeal of this Court’s April 9, 2007 Order Certifying the Class. Federal Rule of Procedure 23(f) states, “An appeal does not stay proceedings in the district court unless the district judge or the court of appeals so orders.” For the reasons stated at oral argument, this Court declines to stay the proceedings

other than to the extent agreed upon by the parties relating to the manner and form of notice to the Class as indicated in the April 9, 2007 Order regarding class certification.

**IT IS FURTHER ORDERED** that Defendant's Motion to Stay the Proceedings is **DENIED** in relation to staying the proceedings. In terms of vacating the January 5, 2007 Order, the April 9, 2007 Order addresses that concern.

S/ARTHUR J. TARNOW  
Arthur J. Tarnow  
United States District Judge

Dated: April 9, 2007

I hereby certify that a copy of the foregoing document was served upon counsel of record on April 9, 2007, by electronic and/or ordinary mail.

S/THERESA E. TAYLOR  
Case Manager